

## § 837.804

the annuitant and the former employing agency in resolution of a grievance, complaint, dispute, appeal or other action, involving an allegedly erroneous separation, before such authority.

(b) *Agency notification to OPM.* Upon receiving a final order requiring cancellation of the annuitant's separation or after the annuitant and the agency agree to cancel the separation, the employing agency must notify OPM and request the amount of the erroneous payment to be recovered under § 550.805(e) of this chapter from any back pay adjustment to which the employee may be entitled.

(c) *Collection of erroneously paid retirement benefits.* (1) If OPM determines that an overpayment of annuity or lump-sum credit has occurred and the employee is entitled to receive back pay because of the canceled separation, the overpaid retirement benefits must be deducted to the extent they can be recovered from the back pay adjustment as required by § 550.805(e) of this chapter.

(2) Amounts recovered from back pay will not be subject to waiver consideration under the provisions of 5 U.S.C. 8346(b) or 8470(b). If there is no back pay or the back pay is insufficient to recover the entire payment, the employee may request that OPM waive the uncollected portion of the overpayment. If waiver is not granted, the employee must repay the erroneous payment.

### § 837.804 Finality of elections under this subpart.

Except as otherwise provided by this subpart, an election of coverage under, or annuity from, another retirement system, in lieu of CSRS or FERS coverage or annuity, or the election between simultaneous entitlements under CSRS or FERS, is final and conclusive for the period of simultaneous entitlement to coverage or annuity.

## PART 838—COURT ORDERS AFFECTING RETIREMENT BENEFITS

### Subpart A—Court Orders Generally

#### ORGANIZATION AND STRUCTURE OF REGULATIONS ON COURT ORDERS

Sec.

## 5 CFR Ch. I (1–1–04 Edition)

- 838.101 Purpose and scope.
- 838.102 Regulatory structure.
- 838.103 Definitions.

#### STATUTORY LIMIT ON COURT'S AUTHORITY

- 838.111 Exemption from legal process except as authorized by Federal law.

#### DIVISION OF RESPONSIBILITIES

- 838.121 OPM's responsibilities.
- 838.122 State courts' responsibilities.
- 838.123 Claimants' responsibilities.
- 838.124 Employees' and retirees' responsibilities.

#### PROCEDURES APPLICABLE TO ALL COURT ORDERS

- 838.131 Computation of time.
- 838.132 Payment schedules.
- 838.133 Minimum awards.
- 838.134 Receipt of multiple court orders.
- 838.135 Settlements.
- 838.136 Administrative appeal rights.

#### ADDRESS FOR FILING COURT ORDERS WITH OPM

#### APPENDIX A TO SUBPART A OF PART 838—ADDRESSES FOR SERVING COURT ORDERS AFFECTING CSRS OR FERS BENEFITS

### Subpart B—Procedures for Processing Court Orders Affecting Employee Annuities

#### REGULATORY STRUCTURE

- 838.201 Purpose and scope.

#### AVAILABILITY OF FUNDS

- 838.211 Amounts subject to court orders.

#### APPLICATION AND PROCESSING PROCEDURES

- 838.221 Application requirements.
- 838.222 OPM action on receipt of a court order acceptable for processing.
- 838.223 OPM action on receipt of a court order not acceptable for processing.
- 838.224 Contesting the validity of court orders.
- 838.225 Processing amended court orders.

#### PAYMENT PROCEDURES

- 838.231 Commencing date of payments.
- 838.232 Suspension of payments.
- 838.233 Termination of payments.
- 838.234 Collection of arrearages.
- 838.235 Payment of lump-sum awards.
- 838.236 Court orders barring payment of annuities.
- 838.237 Death of the former spouse.

#### PROCEDURES FOR COMPUTING THE AMOUNT PAYABLE

- 838.241 Cost-of-living adjustments.
- 838.242 Computing lengths of service.
- 838.243 Minimum amount of awards.